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Tom Cat Development Corp. and Local 46, Metallic Lather Union and Reinforcing Ironworkers of New York City and Vicinity. Cases 2–CA–34267 and 2–CA–34600

September 15, 2003

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

The General Counsel seeks summary judgment in this case pursuant to the terms of a stipulation providing for the payment of backpay to a discriminatee. On November 22, 2002, the Board issued a Decision and Order,¹ inter alia, directing the Respondent, Tom Cat Development Corp., to make whole Alberto Bota and Philip Peyton for loss of earnings and other benefits resulting from their discharges in violation of Section 8(a)(1) and (3) of the Act.

On March 7, 2003,² the Respondent entered into a stipulation consenting to amount of backpay and schedule for Payment, under which the Respondent agreed to make Bota whole by paying him \$6000 in three equal installments on April 2, August 14, and December 12.³ The Stipulation, which was approved by the Regional Director on March 27, also provided that the Respondent waived its right to contest the amount due Bota, as well as its right to invoke all procedures before the Board and/or any court to which it may be entitled. The Stipulation also contains the following provisions:

... In the event Respondent does not make the scheduled payments, the Regional Office will provide Respondent's Counsel with written notice of nonpayment and provide Respondent with 15 days to cure said nonpayment. Such cured payments shall be considered timely for purposes of this Stipulation. The failure to cure any default shall, at the sole option of the Regional Director, make the portion of the entire liquidated amount still unpaid immediately due and payable in one lump sum. In the event Respondent defaults or is late in paying any installment, additional interest may be assessed in accordance with *New Horizons for the*

¹ 338 NLRB No. 89.

² All subsequent dates are 2003, unless stated otherwise.

³ The Region determined during its investigation that Peyton was not owed any backpay because his interim earnings exceeded what he would have earned had he remained employed by the Respondent throughout the backpay period.

Retarded, 283 NLRB 1173, at the sole discretion of the Regional Director.

In the event of Respondent's non-compliance with the terms set forth above upon ten days written notice to Respondent's counsel, the region will move for the entry of a Supplemental Board Order forthwith liquidating the monies owed Alberto Bota and providing for the automatic entry of a court judgment in any appropriate United States Court of Appeals. The Supplemental Order and court judgment shall provide the terms and figures as provided above. Upon the issuance of the court judgment, the Region will pursue collection of any outstanding sums, plus interest, pursuant to the Federal Debt Collection Procedures Act.

The United States Court of Appeals for any appropriate circuit may, upon application by the Board, enter its judgment enforcing the Supplemental Order of the Board. Respondent waives all defenses to the entry of the judgment, including compliance with the Supplemental Order of the Board, provided that Respondent receives 10 days notice of the Board's intent to enter judgment, and that the judgment sets forth the terms and figures stated above. However, Respondent shall be required to comply with the affirmative provisions of the Board's Supplemental Order after entry of the judgment only to the extent that it has not already done so.

The Respondent failed to make the first payment scheduled for April 2, required by the stipulation. By letter and facsimile dated April 3, the General Counsel notified the Respondent's counsel that the payment due on April 2 had not been received, and that if the Respondent did not remit the payment by April 17, the entire amount due Bota would become immediately due and payable in full, and that additional interest may be assessed. The General Counsel also advised the Respondent's counsel that the Region would move for the entry of a Supplemental Board Order liquidating the money owed Bota if payment was not received by April 17. To date, the Respondent has not remitted the payment due on April 2.

On July 25, the General Counsel filed a Motion for Summary Judgment with the Board. On August 7, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

According to the uncontroverted allegations in the Motion for Summary Judgment, the Respondent has failed to comply with the stipulation by failing to remit the agreed-upon backpay payment due Bota on April 2. Consequently, pursuant to the provisions of the stipulation set forth above, we find that the amount to be paid Bota under the stipulation, plus interest accrued to the date of payment, is immediately due and payable in full.

Accordingly, we grant the General Counsel's Motion for Summary Judgment, and will order the Respondent immediately to remit \$6000, plus interest, to the Region for payment to Bota.⁴

ORDER

The National Labor Relations Board orders that the Respondent, Tom Cat Development Corp., Bay Shore,

⁴ As noted above, the Stipulation also provides for the automatic entry of a judgment for this amount in any appropriate United States Court of Appeals, upon notice to the Respondent of the Boards' intent to apply for such judgment.

New York, its officers, agents, successors, and assigns, shall make whole Alberto Bota by paying him \$6000, plus interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws.

Dated, Washington, D.C. September 15, 2003

Robert J. Battista,	Chairman
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Wilma B. Liebman,	Member
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Dennis P. Walsh,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD